



# DELTA STEWARDSHIP COUNCIL

*A California State Agency*

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## **RE: Second Administrative Draft Yolo Habitat Conservation Plan and Natural Community Conservation Plan**

Dear Ms. Marchand:

Thank you for the opportunity to provide these preliminary comments on the latest Administrative Draft of the Yolo Habitat Conservation Plan and Natural Community Conservation Plan (HCP/NCCP). We appreciated the opportunity to meet with you earlier this month, along with representatives from the Department of Fish and Wildlife (CDFW) and the United States Fish and Wildlife Service (USFWS), to discuss most of these comments. We hope this letter will provide further clarification to issues we discussed during our meeting.

The mission of the Delta Stewardship Council (Council) is to promote the coequal goals of water supply reliability and ecosystem restoration in a manner that protects and enhances the unique values of the Delta as an evolving place (CA Water Code Section 85054). The Council has a legally enforceable management framework for the Delta and Suisun Marsh called the Delta Plan which applies a common sense approach based on the best available science to achieve the coequal goals.

We applaud the effort of the Yolo Habitat Conservancy (Conservancy), formerly called the Yolo County HCP/NCCP Joint Powers Authority (JPA), to develop this conservation plan. Overall, we believe the plan will benefit native species and protect natural landscapes throughout the County, including a significant portion of the northern Delta.

### **Delta Plan Covered Actions and Consistency Certification**

The Council was granted specific regulatory and appellate authority under the Delta Reform Act over certain actions that take place in whole or in part in the Delta and Suisun Marsh. The

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*"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."*

*– CA Water Code §85054*

Council exercises that authority through development and implementation of the Delta Plan. State and local agencies are required to comply with the set of 14 regulatory policies contained within the Delta Plan.

According to the Delta Reform Act, it is the state or local agency approving, funding, or carrying out the project that must determine if a project is a “covered action” subject to regulations of the Delta Plan, and if so, certify consistency of the project with Delta Plan policies (Water Code Section 85225). Generally, the California Environmental Quality Act (CEQA) lead agency, which in this case would be the Conservancy, would make the determination if a project is a covered action.

To determine if a project is a covered action subject to Delta Plan regulations, it must meet all four of the “screening criteria” listed below:

- Is a plan, program, or project as defined in to CEQA
- Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh
- Will be carried out, approved, or funded by the State or a local public agency, and
- Will have a significant impact (positive or negative) on the achievement of the coequal goals or the implementation of a government-sponsored flood control program

If the Conservancy’s conservation plan meets all four of the criteria listed above, and implicates at least one of the 13 regulatory policies contained in Chapters 3, 4, 5, and 7 of the Delta Plan, then the proposed action is a covered action. (For more details on this process, please refer to the Covered Action checklist available at <http://deltacouncil.ca.gov/sites/default/files/2014/11/2014-11-25-Covered-Actions-Checklist.pdf>.)

Council staff reviewed the draft HCP/NCCP and noted that several of the planning units (PU) for the conservation plan are partially or entirely within the Legal Delta (i.e., South Yolo Basin [PU 15]; Yolo Basin Plains [PU 16]; South Yolo Bypass [PU 18]; and West Sacramento [PU 21]). Because the draft HCP/NCCP includes habitat restoration, including restoration of wetland habitat, the conservation plan could be considered a “covered action” subject to Delta Plan regulations. Ultimately, however, the determination of whether the plan’s proposed activities are a covered action resides with the Conservancy.

If the HCP/NCCP is determined to be a covered action, the Conservancy will need to complete a certification of consistency that describes how the HCP/NCCP is consistent with the regulatory policies of the Delta Plan. (Please refer to our website at <http://deltacouncil.ca.gov/covered-actions> for more information about the covered action process.) The information and analyses needed to support a consistency certification could be included in the forthcoming draft environmental impact statement/environmental impact report (EIS/EIR), which we understand is tentatively scheduled to be released July 2016.

For the purposes of compliance with both CEQA analysis and the Delta Reform Act, we have identified below a few issues we want to bring to your attention.

## **Mitigation Measures**

Delta Plan Policy **G P1** (23 CCR Section 5002) requires that actions not exempt from CEQA and subject to Delta Plan regulations must include applicable feasible mitigation measures consistent with those identified in the Delta Plan Program EIR or substitute mitigation measures that are equally or more effective. As the Conservancy develops the HCP/NCCP's associated draft EIS/EIR, we recommend that you reference relevant mitigation measures in the Delta Plan's EIR, especially the measures pertaining to biological impacts (See Mitigation Measures 4-1 through 4-5 in the Delta Plan's Mitigation and Monitoring Reporting Program available at [http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a\\_attach%202.pdf](http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf)).

## **Best Available Science and Adaptive Management**

Delta Plan Policy **G P1** also states that actions subject to Delta Plan regulations must document use of best available science. Similarly, the Natural Community Conservation Planning Act (NCCPA) requires that NCCPs have conservation measures that meet the biological needs of covered species that are based on "best available scientific information" about the status of those species and the impacts of permitted activities on covered species. This requirement can be satisfied through the development of an adaptive management plan that is consistent with the framework described in Appendix 1B of the Delta Plan (<http://deltacouncil.ca.gov/delta-plan-regulations>).

We understand that the Conservancy will be implementing adaptive management from a landscape-scale perspective to evaluate whether the plan's conservation, enhancement, and restoration activities are sufficient to achieve the overarching biological goals and objectives of the HCP/NCCP. Based on our initial review, we think that the landscape-scale adaptive management strategy described in the draft conservation plan is generally consistent with the Delta Plan's definition of adaptive management. However, in addition to broad landscape-scale adaptive management, we recommend that the Conservancy ensure adaptive management plans are developed for individual habitat projects, such as wetland restoration activities. The current draft of the conservation plan calls for the Conservancy to develop restoration plans prior to implementing restoration projects, which will identify goals and objectives, include plans for ongoing management strategies, require compliance and effectiveness monitoring, and have an adaptive management strategy. We recommend that the Conservancy's template for restoration plans requires that such projects have an adaptive management strategy consistent with the regulatory requirements of the Delta Plan, including use of conceptual models (either verbally or through a diagram) and a monitoring framework to address key uncertainties.

Given that the Conservancy is seeking a 50-year permit term, impacts from climate change over the extended course of plan implementation may necessitate adjustments in the

management of reserve and restoration areas. During our recent meeting, we raised concerns regarding how climate change may result in reduced future water availability in the County, which may in turn reduce the economic viability of growing rice and hinder maintenance of created wetlands necessary for the mitigation of giant garter snake impacts. We were assured by you and the wildlife agencies that water security (via water rights and/or contracts) is a key priority for approving and accepting conservation easements, as well as determining areas suitable for wetland restoration actions. Additionally, we were informed that many of the rice farmers in Yolo County have senior water rights, and thereby have some of the most secure water rights in the State. Furthermore, if climate change impacts on water availability end up exceeding the current reasonable projections, the Conservancy will have a contingency fund to respond to such an unforeseen circumstance. We recommend including this explanation of how the Conservancy will address climate change impacts as an example of how the conservation plan will be guided by an adaptive management framework.

Delta Plan Policy **G P1** also requires documentation of adequate resources to implement the proposed adaptive management plan. Since the HCP/NCCP will be primarily funded through development fees, then it is expected that funding of monitoring and adaptive management for habitat restoration and creation projects will be assured.

### **Restore Habitat in a Manner Consistent with the Delta Plan**

Delta Plan Policy **ER P2** (23 CCR Section 5006) states that habitat restoration must be consistent with Appendix 3 of the Delta Plan regulations and that restoration will occur at appropriate elevations. Appendix 3, which is an excerpt from the 2011 Draft Ecosystem Restoration Program (ERP) Conservation Strategy, provides a vision for a mosaic of different habitat types within the Delta including open water, subsided lands, floodplains, and upland areas. It also includes a vision for use of Delta agricultural lands to support special-status wildlife species, which is particularly germane to your HCP/NCCP because much of the conservation plan's strategy involves widespread use of wildlife-friendly farming through conservation easements. Additionally, the ERP Conservation Strategy calls for protecting and creating a mosaic of different upland habitat types that are well distributed and connected to other natural communities. Regarding this matter, we appreciate that key principles guiding the HCP/NCCP's conservation strategy—connectivity between preserved habitats, linkages between sub-populations of covered species, and preservation of habitat that benefits multiple covered species—are consistent with Appendix 3 of the Delta Plan regulations, as required by this policy.

### **Protect Opportunities to Restore Habitat**

Delta Plan Policy **ER P3** (23 CCR Section 5007) requires that, within the priority habitat restoration areas (PHRAs) depicted in Appendix 5 of the Delta Plan, significant adverse impacts to the opportunity to restore habitat must be avoided or mitigated. Much of the overlap between the Legal Delta and the HCP/NCCP Plan Area includes the Yolo Bypass PHRA. As we have discussed, the Department of Water Resources (DWR) and the United States Bureau

of Reclamation (USBR) are developing a project to enable increased inundation of the Yolo Bypass to comply with a Reasonable and Prudent Alternative of the National Marine Fisheries Services 2009 Biological Opinion for salmonids. This effort, the proposed Yolo Bypass Salmonid Habitat Restoration and Fish Passage project, is consistent in principle with the ERP Conservation Strategy.

There is a strong possibility that in order to achieve the biological objectives of the HCP/NCCP, the Conservancy will protect, create and restore habitat within the Legal Delta to support terrestrial wildlife species such as giant garter snake. The draft HCP/NCCP, for example, seeks to improve and protect connectivity between the Yolo Bypass and Willow Slough subpopulations of giant garter snake, with an estimated 112 acres of aquatic habitat and 76 acres of fresh emergent wetland habitat to be restored. Creating and restoring habitat for this terrestrial species may be incompatible with the ongoing plans to restore the Yolo Bypass to a more frequently inundated floodplain. The draft HCP/NCCP does state that areas with high flood flows in the Yolo Bypass should be avoided for programmatic preservation of giant garter snake habitat, since the Bypass under existing conditions is regularly flooded to some extent in most years.

As we discussed at our meeting, coordination with the proposed Yolo Bypass fish habitat restoration project is challenging because that effort may still be several years from developing a specific restoration design with complete hydrologic modelling. Given the uncertainty, we recommend that the initial focus for giant garter snake restoration and preservation be in other areas of the County, such as the Colusa Basin and lower Cache Creek. We expect that there will be opportunities later in the 50-year implementation period of the HCP/NCCP to explore giant garter snake conservation options in the Bypass (for example, on the west side of the Bypass where elevations are generally higher), after the DWR/USBR salmonid habitat restoration project is finalized and implemented.

In addition, please analyze the extent to which any of the covered activities in the HCP/NCCP may have significant adverse impacts to the opportunity to restore habitat within the Yolo Bypass PHRA. For example, the draft HCP/NCCP states, "Linear projects in rural areas, such as new roads and trails, utility rights-of-way, and private access roads, could fragment the landscape and create obstructive barriers between species' habitats. Wildlife could be prevented from accessing breeding or foraging habitat due to the hazards created by the roadway (e.g., traffic, lack of vegetative cover, increased exposure to predators). This disruption of wildlife movement results in increased habitat and population fragmentation, and should be avoided or minimized whenever feasible." Please explain how expected impacts in the Yolo Bypass PHRA will be avoided, minimized or mitigated in order to achieve consistency with **ER P3**.

## **Land Use**

The Delta Plan calls for locating new development wisely in order to enhance the Delta's unique sense of place by protecting agriculture and open space while reducing risks to people

and property. Specifically, Delta Plan Policy **DP P1** (23 CCR Section 5010) calls for locating new residential, commercial and industrial development within areas designated for development in the Delta Plan, based on city and county general plans approved before adoption of the Delta Plan on May 17, 2013. Development is also permitted outside areas designated for development if it is consistent with the land uses designated in county general plans approved before adoption of the Delta Plan.

The covered activities in Yolo County and West Sacramento listed in the Draft HCP/NCCP are taken directly from the respective current general plans, and are therefore likely to be consistent with **DP P1**. However, the fact that the City of West Sacramento is currently updating its general plan raises questions about consistency over time. The draft Yolo HCP/NCCP states, "To the extent that future development and redevelopment associated with the [City of West Sacramento's] updated General Plan will occur within the limits of the City's current General Plan planning area, implementation of the updated General Plan will also be covered by the [HCP/NCCP]." The City of West Sacramento's current General Plan planning area extends south of the City into areas currently designated as agricultural in Yolo County's general plan. This planning area is not in a sphere of influence, i.e., planning for future expansion of the city limits has not been approved by the local area formation commission. Therefore, any urban development in this area would be inconsistent with **DP P1**. In your consistency certification, please confirm consistency of the draft HCP/NCCP's covered activities with **DP P1**.

Delta Plan Policy **DP P2** (23 CCR Section 5011) states that ecosystem restoration must be sited to avoid or reduce conflicts with existing uses and those uses described in city and county general plans when feasible, considering comments from local agencies and the Delta Protection Commission. The portion of the draft HCP/NCCP's planning area that overlaps with the Delta is designated as agriculture and open space, and the primary existing uses include agriculture, wildlife habitat, flood management, and recreation. We note that the draft HCP/NCCP proposes to avoid or reduce conflicts with agriculture in the Delta by protecting cultivated land as habitat for western burrowing owl, Swainson's hawk, and giant garter snake. We suggest that measures to avoid or reduce potential conflicts with flood management and recreation should also be documented. We recognize the conservation plan is inherently consistent with a major part of the **DP P2** policy, since it is being collaboratively developed by the County and participating Yolo County cities and the primary purpose of the plan is to provide incidental take authorization for planned development described in city and county general plans. In our role of facilitating coordination between local and State agencies, we also highly recommend that the Conservancy consult with the Delta Protection Commission (DPC), especially since the conservation plan will affect the primary zone of the Delta which is within the DPC's jurisdiction.

Additionally, **DP P2** requires that plans for ecosystem restoration must consider sites on existing public lands, when feasible and consistent with a project's purpose, before privately owned sites are purchased. We suggest the Conservancy explain how the conservation plan

will address the requirement to consider sites on existing public lands, when feasible and consistent with a project's purpose, before privately owned sites are purchased.

## **Invasive Species**

Delta Plan Policy **ER P5** (23 CCR Section 5009) calls for avoiding introductions and habitat improvements for invasive nonnative species or mitigating these potential impacts in a manner that appropriately protects the ecosystem. Analysis on this matter should address both nonnative wildlife species as well as terrestrial and aquatic weeds. The HCP/NCCP identifies several weed species of great concern (e.g., giant reed, tamarisk, perennial pepperweed, yellow starthistle, and Himalayan blackberry).

We acknowledge that it is infeasible to ensure that managed sites are free of nonnative species. However, we still believe that the Conservancy should address invasive species infestations at site-specific locations, especially in circumstances when their presence substantially degrades habitat functions. A framework for identifying potential problematic invasive species and strategies for addressing them should be included in the management plan templates. The Conservancy should also ensure that funds are set aside for invasive species management in habitat restoration and creation projects as part of the adaptive management process.

We understand that much of the lands that will be enrolled under the HCP/NCCP will be protected by conservation easements to ensure ongoing land use practices are maintained (e.g., easements for the continued farming of alfalfa and row crops for Swainson's Hawk foraging habitat) and may not involve any change in land use or management that could facilitate colonization by invasive species. For such reserve land, we nevertheless recommend ensuring that strategies are put in place (e.g., landowners spraying or disking noxious weeds, which they may do anyway for agricultural purposes) to ensure that their wildlife habitat functions do not become degraded because of invasive species infestations.

To the maximum extent practicable, design of habitat restoration and creation actions should avoid or minimize effects that would lead to establishment of nonnative invasive species populations on site before relying upon mitigation measures. In the event that mitigation is warranted, those mitigation and minimization measures should be consistent with the Delta Plan. The Delta Plan Program EIR Biological Resources Mitigation Measure 4-1 calls for an invasive species management plan to be developed and implemented for any projects that could lead to introduction or facilitation of invasive species establishment. The plan must ensure that invasive plant species and populations are kept below preconstruction abundance and distribution levels and be based on best available science and developed in consultation with Department of Fish and Wildlife and local experts (e.g., UC Davis, California Invasive Plant Council). This mitigation requirement also calls for the plan to include the following elements:

- Nonnative species eradication methods (if eradication is feasible);

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- Nonnative species management methods;
- Early detection methods;
- Notification requirements;
- Best management practices for preconstruction, construction, and post construction periods;
- Monitoring, remedial actions and reporting requirements; and
- Provisions for updating the target species list over the lifetime of the project as new invasive species become potential threats to the integrity of the local ecosystems.

## Final Comments

Overall, we are pleased with the progress of Conservancy in developing this HCP/NCCP in a manner that promotes recovery of listed species and natural landscapes while helping to promote economic sustainability of agriculture. We appreciate your willingness to engage with us and look forward to continued coordination and dialogue as you proceed in the next stages of the conservation plan approval process. If you have any questions, comments, or concerns, feel free to contact Jessica Davenport at [Jessica.Davenport@deltacouncil.ca.gov](mailto:Jessica.Davenport@deltacouncil.ca.gov) or Daniel Huang at [Daniel.Huang@deltacouncil.ca.gov](mailto:Daniel.Huang@deltacouncil.ca.gov).

Sincerely,

A handwritten signature in blue ink that reads "Cindy Messer". The signature is fluid and cursive, with the first name "Cindy" and last name "Messer" clearly legible.

Cindy Messer  
Deputy Executive Officer  
Delta Stewardship Council